

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

In re:

**Case No. 6:96-bk-03065-ABB
Chapter 13**

ROBERT FERGUSON,

Debtor.

ORDER

This matter came before the Court on the Debtor's Motion for Sanctions Against Citibank (West) FSB f/k/a California Bank ("Sanctions Motion")¹ filed by Robert Ferguson, the Debtor herein (the "Debtor"), against Citibank (West) FSB f/k/a California Federal Bank ("Citibank") relating to two Orders entered by the Court on November 7, 2005² and December 8, 2005.³ An evidentiary hearing was conducted on February 7, 2006. The Debtor and his counsel appeared at the hearing. Citibank did not respond to the Sanctions Motion or appear at the hearing. After reviewing the pleadings and evidence, hearing live testimony and argument, and being otherwise fully advised in the premises, the Court makes the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

The Debtor filed a Chapter 13 bankruptcy case on May 15, 1996 ("Petition Date").⁴ He listed Citibank, who holds a mortgage on the Debtor's home, as a secured creditor in Schedule D of his schedules. The real property encumbered by Citibank's mortgage is described as: That parcel of land lying in Section 10, Township 20 South, Range 32 East, Seminole County, Florida together with a 1989 Vagabond River Villa 60X28 Mobile Home ID# 3506A/3506B (the "Property").

Citibank filed a proof of claim in the Debtor's case on June 19, 1996 (Claim No. 3). The Debtor's plan was confirmed on November 25, 1996⁵ and he successfully fulfilled his plan obligations on

March 11, 2002.⁶ The Debtor received a discharge on March 13, 2002⁷ and his case was closed. The Debtor was current with his Citibank mortgage at the conclusion of his bankruptcy case and he continued to make monthly mortgage payments to Citibank.

Citibank, post-discharge, has sent numerous letters to the Debtor attempting to collect alleged mortgage arrearages and to collect unspecified "fees/charges" in excess of \$5,000. All mortgage arrearages owed to Citibank had been fully paid through the Debtor's plan and Citibank is not entitled to the fees and/or charges it is attempting to collect. Citibank states an incorrect principal balance for the Debtor's mortgage in its letters.

The Debtor disputed Citibank's post-petition collection attempts and the incorrect principal balance figure. He, through counsel, communicated with Citibank in writing requesting the fees and charges be explained. Citibank sent a payoff statement to the Debtor and stated the fees and charges represented fees incurred during his bankruptcy case. The Debtor demanded Citibank remove the charges. Citibank refused to remove the charges. The Debtor filed a Motion to Reopen his Chapter 13 case to address the Citibank dispute. The Motion to Reopen was sent to the "President, Officer, Manager or General Agent" of Citibank at P.O. Box 997150, Sacramento, CA 95889-7150.⁸

The Debtor's case was reopened on September 14, 2005⁹ and he filed the Sanctions Motion. A preliminary hearing on the Sanctions Motion was held on October 18, 2005 and the Court granted the Motion on a preliminary basis and set a final evidentiary hearing for November 29, 2005. Citibank did not respond to the Motion to Reopen or the Sanctions Motion, nor did it appear at the October 18th hearing. The hearing was properly noticed.¹⁰

The Court entered an Order on November 7, 2005 (the "November Order") granting the Motion on a preliminary basis, disallowing all arrearages and fees claimed by Citibank, establishing \$19,000.16 as the correct principal mortgage balance as of October 2005, ordering Citibank to immediately update its records, and setting a hearing for November 29, 2005 for further determination of proper sanctions against Citibank.

¹ Doc. No. 64.

² Doc. No. 69.

³ Doc. No. 72.

⁴ Doc. No. 1.

⁵ Doc. No. 34.

⁶ Doc. No. 53.

⁷ Doc. No. 54.

⁸ Doc. No. 58.

⁹ Doc. No. 62.

¹⁰ Doc. No. 66.

Citibank did not comply with the November Order. A final evidentiary hearing was held on November 29, 2005 and the Court granted the Sanctions Motion finding Citibank willfully violated the Debtor's discharge order. Citibank did not appear at the hearing. The Court entered an Order on December 7, 2005 (the "December Order") ordering Citibank to pay sanctions in the amount of \$10,000 to the Debtor within fifteen days of the date of the Order and setting the matter for hearing on February 7, 2006. The November Order and December Order were properly served on Citibank.

The Court held a hearing on February 7, 2006 to determine whether Citibank complied with the November and December Orders and whether additional sanctions are appropriate. Citibank did not appear at the hearing. Citibank did not comply with the November and December Orders.

Citibank had notice of the Debtor's discharge. Citibank knew the Debtor was protected by the discharge injunction. Citibank's communications to the Debtor were attempts to collect a debt that had been paid and discharged in his Chapter 13 case. The communications were an attempt to have the Debtor pay erroneous charges and Citibank misstated his mortgage balance. Citibank's failure to immediately cease collection actions and update its account records upon receiving communication from the Debtor was intentional. Citibank willfully violated the Debtor's discharge injunction.

Citibank's failure to comply with the November and December Orders was intentional and constitutes further willful violation of the Debtor's discharge injunction. Citibank is in contempt of the November and December Orders. The Debtor suffered injuries, including actual damages of \$5,000.00 for attorney's fees and costs, as a result of Citibank's willful actions. The Debtor is entitled to an award of sanctions against Citibank in the amount of \$10,000.00 (as previously awarded in the December Order) and an award of attorney's fees in the amount of \$5,000.00. The Debtor may be entitled to additional damages, which may include satisfaction of Citibank's mortgage on the Property.

CONCLUSIONS OF LAW

A discharge injunction arises when a debtor is granted a discharge pursuant to 11 U.S.C. § 524(a). The injunction protects a debtor from any act to collect a debt by a creditor whose claim had been discharged in bankruptcy. A discharge specifically:

(2) operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor whether or not discharge of such debt is waived;¹¹

The injunction is broad and coverall all forms of collection activity.¹² The debtor obtained a discharge pursuant to 11 U.S.C. § 1328(a). The discharge injunction of § 524(a) arose immediately upon the entry of the Debtor's discharge order on March 13, 2002.¹³ The discharge injunction is equivalent to a court order.¹⁴ A bankruptcy court may invoke the contempt powers of 11 U.S.C. § 105(a) to enforce a discharge injunction. A bankruptcy court has broad discretion in its choice of civil contempt sanctions pursuant to § 105 for violations of the discharge injunction.¹⁵

Citibank participated in the Debtor's bankruptcy case and knew his mortgage arrearages were paid through the plan. Citibank knew the Debtor was current on his mortgage payments at the conclusion of his Chapter 13 case. Citibank knew the Debtor obtained a discharge in his bankruptcy case. The Debtor was making regular monthly payments to Citibank post-discharge. Citibank's post-discharge communications to the Debtor addressing alleged mortgage arrearages, alleged unpaid charges, and an incorrect mortgage balance constitute acts to collect or recover a discharged debt as a personal liability of the Debtor pursuant to 11 U.S.C. § 524(a)(2).

Citibank's actions constitute willful and intentional violations of the Debtor's discharge injunction. Citibank's failure to cease communications, correct its account records, and comply with the Court's November and December Orders constitute willful and intentional continuing violations of the Debtor's discharge order. Citibank knew the discharge was entered and intended its actions which violate the discharge injunction.¹⁶ Citibank is in contempt of Court for its failure to honor the discharge injunction and to comply with the November and December Orders.

¹¹ 11 U.S.C. § 524(a)(2) (2005).

¹² 4 COLLIER ON BANKRUPTCY ¶ 524.02[2], at 524-14.9 (15th ed. rev. 2005).

¹³ 11 U.S.C. § 524(a) (2005).

¹⁴ 4 COLLIER ON BANKRUPTCY ¶ 524.02[2], at 524-14.10.

¹⁵ *Id.*; *In re Rivera Torres*, 309 B.R. 643 (B.A.P. 1st Cir. 2004).

¹⁶ 4 COLLIER ON BANKRUPTCY ¶ 524.02[2][c], at 524-20.

The Debtor has suffered injuries, including incurring attorney's fees and costs, as a result of Citibank's willful violations of the discharge injunction. The Debtor is entitled to recover attorney's fees and costs in the amount of \$5,000.00, in addition to the \$10,000.00 previously awarded to the Debtor in the December Order. The imposition of additional sanctions pursuant to 11 U.S.C. § 105(a) may be appropriate, including deeming Citibank's mortgage on the Property satisfied.

Accordingly, it is

ORDERED, ADJUDGED and DECREED that Citibank (West) FSB f/k/a California Federal Bank committed willful violations of the discharge injunction of 11 U.S.C. § 524(a); and it is further

ORDERED, ADJUDGED and DECREED that Citibank (West) FSB f/k/a California Federal Bank is in contempt of Court for its failure to honor the discharge injunction of 11 U.S.C. § 524(a) and to comply with the Court's November Order and December Order; and it is further

ORDERED, ADJUDGED and DECREED that the Debtor's Sanctions Motion is hereby **GRANTED** and an award of sanctions is appropriate pursuant 11 U.S.C. §§ 524(a) and 105(a); and it is further

ORDERED, ADJUDGED and DECREED that the Debtor is hereby awarded damages pursuant to 11 U.S.C. § 524(a) against Citibank (West) FSB f/k/a California Federal Bank for attorney's fees in the amount of \$5,000.00 and Citibank (West) FSB f/k/a California Federal Bank is hereby directed to pay said sum to the Debtor within fifteen (15) days of the date of this Order; and it is further

ORDERED, ADJUDGED and DECREED that a representative of Citibank (West) FSB f/k/a California Federal Bank shall appear at the Court on May 2, 2006 at 10:30 a.m. at which time the Court shall conduct a show cause hearing to consider why the additional sanctions should not be imposed against Citibank; and it is further

ORDERED, ADJUDGED and DECREED that all other Orders entered in this case that do not conflict with this Order shall remain in full force and effect.

A separate judgment in favor of the Debtor Robert Ferguson and against Citibank (West) FSB f/k/a California Federal Bank consistent with these Findings of Fact and Conclusions of Law shall be entered contemporaneously.

Dated this 4th day of April, 2006.

/s/ Arthur B. Briskman

ARTHUR B. BRISKMAN

United States Bankruptcy Judge